



(4310-4J-P)

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

**[167A2100DD / AAKC001030 / A0A501010.999900]**

### **Hannahville Indian Community Liquor Control Code**

**AGENCY:** Bureau of Indian Affairs.

**ACTION:** Notice.

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**SUMMARY:** This notice publishes the amended Hannahville Indian Community Liquor Control Code, title IV, chapter 13. The amended Code regulates and controls the possession, sale, and consumption of liquor in conformity with the laws of the Hannahville Indian Community or applicable laws of the State of Michigan.

**DATES:** This amendment is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sherrel LaPointe, Tribal Operations Officer, Midwest Region, Bureau of Indian Affairs, Norman Pointe II, 5600 American Boulevard West, Suite 500, Bloomington, Minnesota 55437, Telephone: (612) 713-4400.

### **SUPPLEMENTARY INFORMATION:**

The Hannahville Indian Community duly adopted the amended Code by Resolution Number 0504-2015-A on May 4, 2015. This Code repeals and replaces the previous liquor control code for the Hannahville Indian Community Liquor Control Code, last published in the **Federal Register** on April 14, 1976 (41 FR 15720).

Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. This notice is published with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Hannahville Indian Community duly adopted this amendment to the Hannahville Liquor Control Code by Resolution No. 0504-2015-A on May 4, 2015.

Dated: June 22, 2016.

Lawrence S. Roberts  
Acting Assistant Secretary–Indian Affairs

The Hannahville Indian Community Liquor Control Code, as amended, shall read as follows:

## **HANNAHVILLE INDIAN COMMUNITY LIQUOR CONTROL CODE**

### **TITLE IV - CHAPTER 13**

**13.100 Short Title.** This Code shall be known and may be cited as “The Hannahville Indian Community Liquor Control Code,” or “The Liquor Control Code.”

#### **13.101 Definitions, General.**

(1) “Alcohol” – the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) “Alcoholic Liquor” – any spirituous, vinous, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to one of the varieties defined in this chapter.

(3) “Beer” – any beverage obtained by alcoholic fermentation of an infusion of decoction of barley, malt, hops or other cereal in potable water.

(4) “Brandy” – an alcoholic liquor as defined in 27 CFR 5.22(d) (1980).

(5) “Class C License” – a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises.

(6) “Community” – the Hannahville Indian Community.

(7) “Council” – the Tribal Council of the Hannahville Indian Community.

(8) “Licensee” – Any entity or person licensed to sell beverages containing alcohol in accordance with the laws of the Hannahville Indian Community or applicable laws of the State of Michigan. Except where otherwise specifically required by applicable law or regulation, use of the word licensee shall be understood to include the word permittee.

(9) “Mixed Spirit Drink” – a drink produced and packaged or sold by a mixed spirit drink manufacturer or an out of state seller of mixed spirit drink, which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide or preservatives.

(10) “Mixed Wine Drink” – a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling or carbonated water and containing 1 or more of the following:

(a) Nonalcoholic Beverages.

(b) Flavoring.

(c) Coloring Materials.

(d) Fruit Juices.

(e) Fruit Adjuncts.

(f) Sugar.

(g) Carbon Dioxide.

(h) Preservative.

(11) “Permittee” – Any entity or person licensed to sell beverages containing alcohol in accordance with the law or regulation of the Hannahville Indian Community or applicable laws or regulations of the State of Michigan. Except where otherwise specifically required

by applicable law or regulation, use of the word licensee shall be understood to include the word permittee.

(12) “Sacramental Wine” – wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

(13) “Seller” – a person who has become at least 18 years of age and who is authorized by a licensee or permittee to sell beverages containing alcohol while acting within the scope of the license or permit that has been issued by the Tribe.

(14) “Spirits” – a beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(15) “Tribe” – the Hannahville Indian Community.

(16) “Wine” – the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes or any other fruit with the usual cellar treatment, and containing not more than 21% alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

**13.102 General Prohibition.** It shall be unlawful to manufacture for sale, sell, offer, serve, trade, or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations and restrictions specified in this Code.

**13.103 Tribal Council; Control of Alcoholic Beverages.**

(1) The Tribal Council shall have the sole and exclusive right to authorize, permit, license and control the importation, sale, possession, manufacture, transportation, storage or

delivery of alcoholic beverages within the jurisdiction of the Hannahville Indian Community.

(2) Notwithstanding the provision of subsection (1) of this section, a person who has become 21 years of age may purchase alcoholic liquor or may import alcoholic liquor from another jurisdiction for that person's personal use, but not for resale purposes.

**13.104 Penalty; Failure to Comply.** Any person who shall sell, serve, trade, transport, keep for sale, manufacture, possess, use, conduct any transaction, aid or abet or conspire to violate any of the terms of this Code within the jurisdiction of the Hannahville Indian Community shall be deemed guilty of an offense and upon conviction shall be dealt with as follows:

(1) If an Indian. The defendant may be sentenced to a period of incarceration not to exceed 1 year or a fine not to exceed \$5,000.00, or both such fine and incarceration and court costs. The Tribal Council shall decide whether or not any license previously granted under this Code will be revoked or suspended.

(2) If a Non-Indian. Unless otherwise allowed by law, the defendant shall be liable for a fine not to exceed \$5,000.00 and court costs, and shall be subject to the forfeiture and attachment laws of the tribe including prejudgment attachment of personal property in lieu of cash bond to secure judgment and jurisdiction of the tribal court. In the event that criminal jurisdiction as to non-Indians is extended to the Tribe as a matter of federal law then the penalties of section 13.104(1) shall apply. The Tribal Council shall decide whether or not any license previously granted under this Code will be revoked or suspended.

(3)No Pre-Emption. This Code does not pre-empt other civil or criminal codes or provisions of the Hannahville Indian Community Legal Code. Other causes of action and criminal charges that may be brought under other provisions of tribal law are expressly reserved hereunder. Actions required or permitted to be taken pursuant to the employment policies and procedures of the Tribe are also expressly reserved.

**13.105 Licensees and Permittees: Ages of Sellers and Purchasers; Types of Licenses; Sale to Obviously Intoxicated Persons; Adulterated Alcoholic Beverages Prohibited; Licensee's and Permittee's Liability for Acts of Sellers.**

(1) Age of Sellers. Sellers of alcoholic beverages must be at least 18 years of age and are only permitted to make sales of beverages containing alcohol by express authorization within the scope of a licensee's or permittee's license or permit and on authorized business premises.

(2) Age of Purchasers. Purchasers of alcoholic beverages must be at least 21 years of age and shall show proper identification and proof of age upon purchase.

(3)Licenses or Permits; Hours of Sale. Hours of sale of alcoholic beverages will be determined upon issuance of the license or special permit, and will be in conformity with the type of license or permit authorized by the Tribal Council in conformity to applicable substantive state law.

(a)Special Event Permits; Conformity to Tribal and Applicable State Law. Permits issued by the Hannahville Indian Community under this Code to any person or entity for special events shall be issued in conformity with applicable substantive provisions of Michigan law or regulation as to times of sales and service, ages of purchasers, and duration of events.

(4) Sales to Obviously Intoxicated Persons. No person may sell, serve, give, furnish, or in any way procure for another, alcoholic beverages for the use of an obviously intoxicated person.

(5) Consumption of Alcohol by Obviously Intoxicated Persons On Premises Prohibited. A licensee or permittee shall not allow a person who is in an obviously intoxicated condition to consume beverages containing alcohol on the licensed or permitted premises.

(6) Adulterated Alcoholic Beverages; Regulation. No person may sell, serve, give, furnish or in any way procure for another any diluted or adulterated alcoholic beverage except as allowed by special license providing for the sale of mixed drinks on the premises of the licensee.

**13.106 Licensees and Permittees; Liability for Acts of Sellers or Servers.** Every licensee or permittee is responsible for the conduct of sellers or servers authorized to participate in transactions related to alcoholic beverages on the premises of the licensee. Provided, however, that if the licensee is a tribally wholly owned enterprise this provision does not constitute a waiver of tribal sovereign immunity as to the enterprise nor as to the Tribe.

**13.107 Licensees and Permittees; Who or What Entity May Apply; Standard for Approval.** Any person who has become 21 years of age, including a tribally owned business entity may apply for an alcoholic beverage license or special permit by submitting an application containing the information required in 13.109, and may be granted a license or special permit for the sale, service, use, possession or transport of alcoholic beverages if the Tribal Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Council may deem relevant, that such



issuance is in the best interest of the Community. Factors which the Tribal Council shall consider in granting, renewing or revoking a license shall include, but not be limited to, information required by section 13.109. Special licenses or permits may be granted to tribal organizations for special events, charitable functions, and special tribal celebrations.

**13.108 Licenses; Power to License and Tax.** The power to license or permit and to levy taxes under the provisions of this Code is vested exclusively in the Tribal Council.

**13.109 Licenses and Permits: Application; Term of Licenses.**

(1) Applications; Content. An applicant for a license or permit shall provide in the application or demonstrate at a hearing all of the following:

- (a) Name. The name of the person or entity seeking a license or permit.
- (b) Financial Resources. The existence of adequate financial resources for establishment and operation of the proposed licensed business in proportion to the type and size of the proposed licensed business.
- (c) Physical Plant. The existence of an adequate physical plant or plans for an adequate physical plant appropriate for the type and size of the proposed licensed business.
- (d) Location. That the location of the proposed business shall adequately service the public.
- (e) Permit; Nature of Event. In the case of a permit, a description of the nature of the event and the premises upon which, or within which the event is to occur.

(2) Competing Applications. The Council shall consider the order in which competing application forms are submitted to the Council.

(3) License Renewal; Term of License. Licenses are renewable by action of each new Tribal Council on the anniversary date which occurs at one year from last issuance.

Licenses may be granted for any term less than one year but may not be granted for terms of more than three years.

(4)Permits; Term of Permit. Generally, a permit will be granted by the Tribe pursuant to this Code and in accordance with applicable state law or regulation for special events and will be limited to the length of time that the event is to occur.

(5) Notice and Opportunity to be Heard. The Council shall notify the applicant of its decision giving the reason(s) for its decision. In adverse determinations, and upon timely request, which shall occur not more than 5 business days after notice of the adverse action, the Tribal Council shall provide a hearing to the applicant. There is no appeal from the Council's decision.

#### **13.110 Licenses and Permits; Content; Posting; Non-Transferable.**

(1) Licenses and Permits; Content. Each license or permit shall state the name of the license holder and address of the place of business to which it applies; the date of issuance; the date of expiration; the fact that the license or permit is granted by the Hannahville Indian Community Tribal Council; a statement, with the telephone number of the Hannahville Tribal Police Department that violations of the terms of the license or permit or the Liquor Control Code of the Hannahville Indian Community shall be reported to the Hannahville Indian Community Tribal Police who shall report their findings to the Tribal Council.

(2) Posting of Licenses and Permits. Licenses and permits shall be posted in a conspicuous place on the premises of the license holder.

(3) Licenses and Permits; Non-Transferable. Licenses and permits are not transferable to other persons, locations or business entities.

### **13.111 Licensee, Permittee, Liability Policy; Proof of Financial Responsibility.**

Every licensee or permittee shall have proof of liability insurance or bond as required by applicable state law or regulation.

### **13.112 Licenses; Violation Report; Complaint; Notice of Hearing; Revocation; No Appeal.**

(1) Violation; Investigation; Procedure. Upon receiving notice of a violation of this Code, the Hannahville Indian Community Tribal Police shall investigate and submit a report to the Tribal Council.

(2) License or Permit; Suspension; Revocation. The Tribal Council may choose to act immediately in response to the alleged violation by suspension or revocation of the license or permit, or may act at any time during or after a prosecution on the complaint. The Council may take any appropriate action in relation to the license, including suspension or revocation and may assess fines civilly against persons responsible for the violation in accord with section 13.104 (1) or (2). Such fines may be in addition to any fines, damages or court costs that are assessed pursuant to other provisions of law. The Council may in its deliberations consider any evidence which it considers valuable and relevant.

(3) Notice and Opportunity to be Heard. The Council shall notify the licensee or permittee of its action giving the reason(s) for its decision. Upon timely request, which shall occur not more than 5 business days after notice of the adverse action, the Tribal Council shall provide a hearing to the licensee or permittee. In its discretion, and upon consultation with law enforcement and legal counsel, the Tribal Council may delay a hearing to allow for progress of a court action. There is no appeal from the Council's decision in regard to continued licensure or permitting.

(4) Any appeal from a court action shall be limited to the issues presented and preserved for appeal in the court below.

### **13.113 Licenses; Hours of Sale; Sunday and Christmas Holiday Liquor Transactions.**

In addition to compliance with the requirements of section 13.105, class III gaming and other properly licensed tribally owned establishments may sell at retail, and a person may buy, spirits or mixed spirit drinks, including beer and wine or other beverages containing alcohol between the hours of 7:00 a.m. on Sunday and 2:00 a.m. on Monday unless shorter hours of sale have been specified by the Tribal Council pursuant to special license or permit. A person shall not sell at retail, and a person shall not knowingly and willfully buy, alcohol, or liquor of any kind between the hours of 11:59 p.m. on December 24 and 12 noon on December 25.

(1) Violation of Hours of Sale. It shall be a violation of this section, punishable in accordance with section 13.104, for a person to attempt to, or to sell, serve, furnish, purchase, or to procure for another, alcoholic beverages in violation of the hours of sale allowed by this Code.

(2) Time Zones; Clarification. In accordance with Michigan law, times for allowed sales shall be considered to be CST, for any licensee or permittee located in the central time zone. A reference to the time of day includes daylight savings time, when observed.

(3) Amendment Automatic, Substantive State Law. Amendments to this Code to achieve compliance with applicable substantive state law shall occur automatically as Michigan law is further amended.

(4) Notice of Automatic Amendment. If automatic amendment of this Code in accordance with applicable substantive state law occurs, the Tribal Council shall notify all current

licensees, permittees, law enforcement, and the general public, of the substance of such amendments in a manner calculated to give actual and adequate notice of the amendments and their effective dates.

#### **13.114 The Tribe as Purchaser.**

(1)Class III Gaming Facility; Purchase and Resale of Alcohol. The Tribe, for resale at its Class III gaming establishment, shall purchase spirits, or mixed spirit drinks, including beer and wine or other alcoholic liquor from distributors licensed or otherwise authorized by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by class C licensees.

(2)Convenience Store; Other Enterprises. The Tribe, for resale at its Island Oasis convenience store and gas station, or other properly licensed tribally owned facilities, may purchase spirits, or mixed spirit drinks, including beer and wine or other alcoholic liquor in accordance with tribal law and applicable state and federal law.

#### **13.115 Adulterated and Misbranded Liquors and Refilled Liquor Bottles; Penalty, Definitions.**

(1)“Adulterated, Misbranded Liquor; Violation.” A licensee who, by himself or herself or by his or her agent or employee, sells, offers for sale, exposes for sale, or possesses alcoholic liquor that is adulterated, misbranded, or in bottles that have been refilled is guilty of a violation of this act.

(2)“Adulterated Liquor; Definition.” For purposes of this section, alcoholic liquor is adulterated if it contains any liquid or other ingredient that was not placed there by the original manufacturer or bottler.

(3)“Misbranded Liquor, Definition.” For purposes of this section, alcoholic liquor is misbranded if it is not plainly labeled, marked, or otherwise designated.

(4)“Refilled Liquor Bottles.” For purposes of this section, alcoholic liquor bottles have been refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer or bottler.

(5)“Beer; Inapplicability.” This section does not apply to beer containers.

**13.116 Amendment or Repeal of Code.** This Code may be amended or repealed by a majority vote of the Tribal Council with a quorum present, in regular or special session.

**13.117 Severability.** If any portion of this Code, or the application thereof, is found to be invalid the remainder shall be unaffected and shall remain in full force and effect.

[FR Doc. 2016-15428 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]